

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

JAMES ROLLER AND RUTH ROLLER

Appellants

v.

AMERICAN MODERN HOME INSURANCE CO.

Respondent

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DOCKET NUMBER WD77611

DATE: December 15, 2015

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Appeal From:

Circuit Court of Clay County, MO  
The Honorable Janet Lodwick Sutton, Judge

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Appellate Judges:

Division Four  
Alok Ahuja, Chief Judge, Thomas H. Newton, Judge, and David M. Byrn, Special Judge

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Attorneys:

Bruce Brown, Kearney, MO

Counsel for Appellants

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Attorneys:

Corey Kraushaar, St. Louis, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

JAMES ROLLER AND RUTH ROLLER, Appellants, v.  
AMERICAN MODERN HOME INSURANCE CO., Respondent

**WD77611**

**Clay County**

Before Division Four Judges: Ahuja, C.J., Newton, J., and Byrn, Sp. J.

Roller attempted to commit suicide by setting fire to his garage. After Roller's change of heart, Roller's wife took the appropriate steps to contain the fire and make a claim against the Rollers' homeowners policy with American Modern Home Insurance (AMHIC) for fire damage to the garage and its contents. Before payment could be provided, AMHIC attempted to complete a full investigation of the fire's origin. Roller was in communication with AMHIC during the early stages of the investigation where potential payment was discussed. During this investigation the Rollers failed to participate in scheduled examinations under oath as required by the policy, claiming exemption until AMHIC provided documents they requested. AMHIC failed to produce all documents the Rollers requested. The Rollers sought a court declaration that their AMHIC policy covered the damage. After a bench trial, the court entered judgment for AMHIC. The Rollers appeal.

**AFFIRMED.**

**Division Four holds:**

In their first point the Rollers argue that the trial court erred in ruling that AMHIC did not forfeit its right to deny coverage of their claim because it agreed to pay the policy limits without validly voiding the agreement. We disagree.

To void an agreement, a valid agreement must exist. A valid agreement requires offer, acceptance, and bargained-for consideration. Consideration is either a promise (to do or refrain from doing something) or the transfer of something of value from one party to the other. Here, AMHIC's statement advising Roller of the possibility of payment was not made in exchange for a completed action or a promise of one, so the essential element of consideration is lacking. Furthermore, the statement suggesting a possibility of payment is not sufficiently definite to qualify as a legal offer. Thus, a valid agreement to pay the policy limit did not exist. In addition, waiver of or relinquishing the right to deny liability must be express or implied by actions that unambiguously show the intent to relinquish a contractual right. AMHIC did not take such action; rather it continuously reserved its rights and defenses in its communication with the Rollers. The Rollers' first point is denied.

In their second point, the Rollers argue that the trial court erred in ruling that they failed to submit to examinations under oath as required by the policy which also required AMHIC to act reasonably when making demands upon the insured. The Rollers claim that AMHIC acted unreasonably by making overly broad demands for their documents and the trial court's ruling

was in error because AMHIC failed to make a request for another examination after the trial court limited the scope of the parties' pre-trial exchange of information.

Missouri courts have consistently acknowledged an insurer's right to a complete investigation of a claim, including examinations under oath, and have found that the insured's failure to assist in the investigation precludes any coverage. To deny coverage, the insurance company must show both the existence of substantial prejudice and the exercise of due diligence to gain the insured's cooperation. Prejudice is established when the insured fails to comply because the insured has the best knowledge of the incident's circumstances. The Rollers consistently refused to attend any examinations under oath until AMHIC provided them with the documents they requested. Examinations under oath are not typically contingent on compliance with document requests. Instead, they are independently handled. The Rollers' failure to comply with AMHIC's request for an examination under oath was outside of policy compliance and was prejudicial to the claim investigation. The Rollers' second point is denied.

In their third point, the Rollers argue that the trial court erred in ruling that AMHIC did not violate any of its duties under the Unfair Claims Settlement Practices Act or its duties of good faith and fair dealing. The Unfair Claims Settlement Practices Act specifically states that it cannot be used to create or imply a private cause of action. Thus, the Rollers' third point is denied.

In their fourth point, the Rollers argue that the trial court erred in ruling that no coverage exists under the insurance policy for the loss resulting from a fire intentionally set by Mr. Roller because Missouri law recognizes an exception deeming intentional acts committed while insane to be accidents. Sanity is presumed by the court until the party asserting insanity shows he was incapable of knowing the difference between right and wrong at the time of the act. Here, the record is devoid of evidence indicating that Roller was insane, meaning this court must presume Roller was sane when he intentionally set the fire in his attempt to commit suicide. The Missouri exception grants coverage to acts committed by the insured when insane. Roller's actions are not covered by this exception, and the insurance policy provision controls. The Rollers' fourth point is denied.

Therefore, we affirm.

Opinion by Thomas H. Newton, Judge

December 15, 2015

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